the title: "Centralization and the Law." See notice in 19 HARV. L. REV. 395. He now applies to concrete cases the theories there propounded.

An excellent condensed description of his way of looking at things is given in the preface:

"A new point of view has made its appearance out of the agitation of social movements, within the half dozen years since the last edition of this book was in hand. The struggle between equality and inequality — between the public and privilege, and between privilege as capital and privilege as labor — had not at that time proceeded far enough or long enough to make the meaning, much less the outcome, clear. . . .

"Since then the curtain has lifted somewhat and the social movement has found its place in the courts; though it is still uncertain whether equality or privilege will succeed in the end in making itself the will of the state. Even as it is, however, precedent is relaxing its hold under the pressure of the newer social energy, as some of the following pages will show. . . .

"The new point of view, which is that law must be regarded as the resultant of conflicting social forces (less the conservatism of courts and legislatures), — a point of view long hidden from sight in the faint stages of a social era of equality, — is reflected on many pages of this book as it now appears."

All lawyers will not concur in some of Professor Bigelow's conclusions as to the subjects discussed in Chapters VI and VII. But every candid man who has investigated those subjects must acknowledge that the learned author has rendered an immense service by distinctly bringing out vital issues which have not hitherto received proper attention. He has sensibly diminished the danger of future confusion from irrelevant or obscure discussions. We can recall no treatise which states some of these issues so clearly and withal so briefly. These chapters abound in short, crisp statements. Whether one agrees or disagrees with the special views of the author, one must admit that those views are forcibly stated. Witness the following extracts:

P. 238. " . . . any attempt to explain the newer authorities on hindering contract, on other grounds than of the struggle of social forces to make the law, is academic in nature and misleading in fact."

P. 249. " . . . a purpose to put an end to competition is not competition at all."

P. 250. " . . . the defense of competition does not extend to cases in which the defendant's purpose is to eliminate competition. . . . .

" . . . the doctrine of freedom of contract, both in economics and in law, has proved a delusion and has broken down. Legislatures have fully recognized the fact, and the courts are beginning to feel the pressure."

" . . . if competition is to be kept from running into monopoly."

P. 262, n. 3. (As to certain decisions, now discredited.) "But they are interesting cases, standing as they are at the parting of the ways — uncertain of the real effect of the movement going on and so clinging to the past."

The earlier editions of this work held a high place among the treatises on this formerly neglected topic. Bigelow on Torts was always a good book, and now it is better than ever. It is said that the recent publication of so many volumes of cyclopedias and encyclopedias of law has affected the sale of standard textbooks. We would not question the worth of the encyclopedias. Yet, in the investigation of special topics, such books can seldom be a satisfactory substitute for a standard treatise. The lawyer who has to answer an important question in torts will make a great mistake if he looks only at the encyclopedia and ignores the recent editions of Cooley and Bigelow. J. S.

THE LAW OF EVIDENCE. By Sidney L. Phipson. Fourth Edition. London: Stevens & Haynes. 1907. pp. lxxx, 704. 8vo.

Mr. Phipson is to be congratulated upon his book's having passed into its fourth lustrum of life coincidently with its fourth edition. It is the best book now current on the law of evidence in England. Since the last edition more

than one thousand cases have been added, making in all some fifty-seven hundred cases and statutes cited, and these citations excel in their careful exhaustion of all the minor sources, such as the law journals, the *Times*, and the *Justice of the Peace* reports. At the head of each chapter is a list of references to the corresponding chapters in other treatises — a useful feature, which could have been improved by giving a table of abbreviations and editions used. The most valuable feature of Taylor's treatise, namely, the English statutory citations, now appears here also, with equal fulness. A casual testing finds no omission of the latest English decisions in courts of last resort. Indeed, the painstaking search for every vestige of a ruling is apparent on every page. As a lawyer's hand-book, it is difficult to suppose that this work can be improved upon.

As a scientific instrument for the geodesy of the law of evidence, this treatise makes no claims. It need not therefore be judged from that point of view. Otherwise it might be well worth while to break a friendly lance, after the manner of Sir Nigel Loring, over the author's amalgamation of the diverse rules against reputation and opinion (ch. xxxv); the coördination of the rules of privilege for a third person's title-deeds, and the rules of discovery and of privilege for a party's documents (ch. xvi); and the treatment of that *instantia crucis* of evidence, the *Res Gestae* doctrine (ch. vi). It may be noted that Mr. Phipson, following Professor Thayer, cites John Horne Tooke's Case, in 1794, as the earliest occurrence of this phrase (p. 43); but it appears in fact more than a century earlier, in the Ship Money Case (3 How. St. Tr. 988), in 1637. The interesting point is that this earlier instance uses the plural *res gestae*, although Professor Thayer's favorite idea that the singular *res gesta* was the more correct was supposed to be confirmed by its being the earlier form.

Nevertheless, Mr. Phipson's work has thoroughly freed itself from the unreasoning conventions and meaningless fictions of the older law, and has taken careful account of all the established results of modern theory. In this respect his book should be highly valued by the practitioner for its safe and enlightening guidance. For example, under Burden of Proof (ch. iv), Best Evidence (ch. iv), *Res Inter Alios Acta* (ch. xi), and Parol Evidence (ch. xliv), the great principles of analysis which Professor Thayer's writing and teaching succeeded in making popular and commonplace in this country are found plainly accepted as orthodox. If such changes in the literature of the most obstinate branch of the law can be effected so widely and so soon, through the single-handed labors of one man of science, we need not despair to behold in due season the successful leavening of all parts of our law by any doctrines, however radical, which can convince the profession of their soundness. J. H. W.

MARKETABLE TITLE TO REAL ESTATE By Chapman W. Maupin. Second Edition. New York: Baker, Voorhis & Company. 1907. pp. lxxvi, 910. 8vo.

"Marketable Title" is still known as the title which a court of equity will force a grantor to take at the suit of the seller. The use of this term is wide, and is kept constantly in mind by the more expert conveyancers, for in passing upon objections to title those are properly abandoned which would not cause a court to call it unmarketable. The learned author has dealt with this particular subject directly only in Chapter 31, pp. 705-791. The balance of the volume, some 800 pages, cuts across various topics of the law. An attempt has been made to cover more or less completely such remotely related subjects as suits for specific performance of contracts for the sale of real estate, covenants of title, estoppel by deed, various subjects of the law of damages and the law of contracts, as well as abstracts of title and the formal requirements of conveyances. One may reasonably wonder why he did not treat also of delivery, the recording acts, and the specific performance of contracts relating to real estate which are not in writing. But the author's aim, even if it were successful, might be criticized. The practitioner's power in dealing with a given problem is not increased by finding it treated in relation to a particular subject-matter, but